

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of the effective date of the 7th day of December, 2012, by, between, and among the following undersigned parties:

The Plaintiff, the Federal Deposit Insurance Corporation as Receiver for Michigan Heritage Bank (“FDIC-R”); and Robert J. Reamer and Elizabeth R. Borchert (collectively, the “Settling Defendants”); and Lexington Insurance Company (the “Insurance Company”) (individually, the FDIC-R, the Settling Defendants and the Insurance Company may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to April 24, 2009, Michigan Heritage Bank (“Bank”) was a depository institution organized and existing under the laws of the state of Michigan;

On April 24, 2009, the Bank was closed by the Michigan Office of Financial and Insurance Regulation and, pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R as receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets;

Among the assets to which the FDIC-R as receiver succeeded were any and all of the Bank’s claims, demands, and causes of action;

On March 12, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants in the United States District Court for the Western District of Michigan, being Case No. 1:12-cv-00237, which action remains pending. The FDIC-R’s claims against the Settling Defendants arise out of commercial real estate appraisals allegedly prepared for and/or supplied to the Bank. The Settling Defendants have denied liability for the FDIC-R’s claims;

Lexington Insurance Company issued, respectively, liability policy numbers [redacted] (b)(4)

(b)(4) and [redacted] and predecessor and successor policies (the "Policies"), which insured the Settling Defendants according to the terms, provisions and conditions of the Policies. The Settling Defendants have made claims under the Policies;

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, the Settling Defendants and the Insurance Companies, collectively, agree to pay the FDIC-R the total sum of Eight Hundred Seventy Thousand Dollars (\$870,000) ("the Settlement Funds"). The Settlement Funds shall be paid to the FDIC-R by the Settling Defendants according to the following allocation: the Insurance Company on behalf of Robert J. Reamer shall pay \$650,000 and the Insurance Company on behalf of Elizabeth R. Borchert shall pay \$220,000.

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than February 15, 2013, the Settlement Funds shall be delivered to the FDIC-R c/o its counsel, David W. Centner, Clark Hill PLC, 200 Ottawa Ave. NW, Suite 500, Grand Rapids, MI 49503. Payment shall be made by check(s) and shall be made payable to "Federal Deposit Insurance Corporation as Receiver for Michigan Heritage Bank."

C. In addition, and without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received by the FDIC-R on or before February 15, 2013, then, with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only, the FDIC-R, in its sole discretion, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds, and/or shall have the right to enforce this Agreement against the Party or Parties failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in U.S. District Court in Michigan and agree to pay all of the FDIC-R's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to enforce the terms of this Settlement Agreement. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

SECTION II: Releases

A. Release of Individual Settling Defendants by FDIC-R.

Effective upon receipt in full of the Settlement Funds plus any accrued interest described in SECTION I above, and except as provided in Paragraph II.H. below, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the

performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions with respect to real estate appraisals allegedly supplied to the Bank.

B. Release of FDIC-R by the Settling Defendants.

Effective simultaneously with the release granted in Paragraph II.A. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as alleged appraisers for the Bank or that arise from or relate to the Policies.

C. Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph II.B. above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the performance, nonperformance, or manner of performance of their respective functions, duties and actions as alleged appraisers for the Bank.

D. Release of the Insurance Companies by FDIC-R.

Effective simultaneously with the releases granted in Paragraphs II.A. and II.B. above, the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Insurance Companies, their parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all

claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policies. The FDIC-R agrees that any interest it may have under the Policies is extinguished.

E. Release of the Insurance Companies by Settling Defendants.

Effective simultaneously with the releases granted in Paragraphs II.A. and II.B. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the Insurance Companies, their parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policies. The Settling Defendants agree that any interest they may have under the Policies is extinguished.

F. Release of FDIC-R by the Insurance Companies.

Effective simultaneously with the release granted in Paragraph II.D. above, the Insurance Companies, for themselves and their successors and assigns, and on behalf of their parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby release and discharge FDIC-R, and its employees, officers, directors, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policies.

G. Release of Settling Defendants by the Insurance Companies.

Effective simultaneously with the releases granted in Paragraph II.E. above, the Insurance Companies, for themselves and their successors and assigns, and on behalf of their parents, subsidiaries, affiliates, and reinsurers, and their successors and assigns, hereby release and

discharge each of the Settling Defendants, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Policies.

H. Express Reservations From Releases By FDIC-R.

1. Notwithstanding any other provision, by this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs II.A. or II.D. above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the Eastern District or Western District of Michigan or any other federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

SECTION III: WAIVER OF DIVIDENDS AND PROCEEDS FROM LITIGATION

To the extent, if any, that Settling Defendants are or were shareholders of the Bank's holding company, Michigan Heritage Bancorp, Inc., and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the FHLBB, OTS, RTC, FDIC, FDIC-R, the FSLIC Resolution Fund or the United States government in connection with the Bank, its conservatorship or receivership, they hereby knowingly assign to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other distributions, or such proceeds.

SECTION IV: Representations and Acknowledgements

A. No Admission of Liability. The undersigned parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party hereto or are authorized to sign this Agreement on behalf of the respective party, and that they have the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

D. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Michigan.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Specific Representations Warranties and Disclaimer. Defendant Elizabeth R. Borchert has submitted to the FDIC-R financial information including a signed Financial Disclosure Form (FDIC-R form 7600/01), and Defendant Robert J. Reamer has made disclosures of his financial condition as part of his Chapter 7 bankruptcy filed in the U.S. Bankruptcy Court

for the Western District of Michigan, Case No. 10-11252 (collectively, the "Financial Information"). Each Settling Defendant expressly acknowledges that, in determining to settle the claims released herein, the FDIC-R has reasonably and justifiably relied upon the accuracy of the Financial Information submitted by that Settling Defendant to the FDIC-R. The Settling Defendants severally, but not jointly, swear and affirm that all Financial Information prepared by them and provided to the FDIC-R was true and accurate at the time of submission. The FDIC has no obligation to independently verify the completeness and accuracy of that Financial Information. If, in his/her Financial Disclosure Form, a Settling Defendant has failed to disclose any material interest, legal, equitable, or beneficial, in any asset, that Settling Defendant agrees to cooperate fully with the FDIC-R to transfer his/her interest in that asset to the FDIC-R and to sign any and all documents necessary to effectuate that transfer.

G. Reasonable Cooperation.

1. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement and to otherwise perform the terms of this Agreement.

2. Further, the Individual Defendants agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Bank;

b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank;

c. appearing to testify, upon request by the FDIC-R, in any matter determined by the FDIC-R in its sole discretion, to be related to the Bank, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC-R, regarding any matter, as determined by the FDIC-R in its sole discretion, to be relevant to the Bank.

H. Advice of Counsel. Each party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his or her counsel.

I. Dismissal of Pending Lawsuit In exchange for the consideration set forth in this Agreement, and within five (5) business days of execution of this Agreement by all Parties, counsel for the Parties shall promptly execute, and the FDIC-R's counsel shall promptly file, a stipulated order for dismissal of the case pending in the United States District Court for the Western District of Michigan, being Case No. 1:12-cv-00237, which dismissal shall be with prejudice and without costs or attorney's fees to any party. The Court shall retain jurisdiction to enforce this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR MICHIGAN HERITAGE BANK**

(b)(6)

Date: 1-23-13


BY: 

TITLE: COUNSEL

PRINT NAME: Aaron Forester

(b)(6)

Date: 1-17-2013


Robert J. Keamer

(b)(6)

Date: 01-18-2013


Elizabeth R. Borchert

(b)(6)